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**IN THE
COURT OF APPEALS OF INDIANA**

MARIE DAVIS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0611-CR-1009

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49F09-0311-FD-202440

August 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Marie Davis appeals the trial court's order revoking her probation. We affirm.

Issue

Davis questions whether the trial court violated the principles of double jeopardy and/or collateral estoppel by revoking her probation when she had been previously acquitted of the criminal charge upon which the probation revocation order was based.

Facts and Procedural History

On March 1, 2004, Davis pled guilty to class D felony prostitution, and the trial court sentenced her to two and one-half years, with one and one-half years suspended and one year of probation. On the afternoon of June 25, 2006, Davis was walking east on Washington Street when Indianapolis Police Department Detective Ernest Witten stopped and offered her a ride, which she accepted. Detective Witten was working undercover, looking for signs of prostitution activity in the area. After picking up Davis, Detective Witten drove to the 3300 block of English Avenue and offered Davis cash in exchange for a sex act. When Davis agreed, Detective Witten arrested her for prostitution.

On June 25, 2006, the State charged Davis with prostitution as a class A misdemeanor and as a class D felony. On June 28, 2006, the State filed a notice of violation of probation, citing the prostitution charge of June 25, 2006, Davis's failure to fulfill her monetary obligation, and two urinalysis tests, one showing a dilute sample and one showing a positive result for cocaine. Appellant's App. at 32. On September 29, 2006, the State filed an amended notice of violation of probation, which included the new allegation that Davis had submitted to a third urinalysis, which tested as dilute and positive for cocaine.

On October 12, 2006, the trial court held a trial and revocation hearing in this case. The trial court found Davis not guilty on the June 25, 2006, prostitution charge. The court then found probable cause with regard to that same charge and determined that Davis had therefore violated the terms of her probation. The court revoked her probation and ordered her to serve one and one-half years in prison. Davis now appeals.

Discussion and Decision

Davis argues that the trial court violated double jeopardy and/or collateral estoppel by revoking her probation for committing a prostitution offense after she had been acquitted of that same offense. We have previously addressed this issue. In 1981, this Court held that revocation of a defendant's probation for commission of a crime after he was acquitted of that same crime did not violate principles of collateral estoppel and double jeopardy where evidence presented at the criminal trial was reexamined, additional testimony was taken, and the limited rights afforded an alleged probation violator were protected. *Jackson v. State*, 420 N.E.2d 1239 (Ind. Ct. App. 1981). More recently, we considered the issue of whether a probation revocation order was improper where the parties presented no additional evidence at the hearing but rather relied upon the evidence presented at the criminal trial, which had resulted in a not guilty verdict. *Thornton v. State*, 792 N.E.2d 94, 96 (Ind. Ct. App. 2003). Clearly, the State had failed to prove Thornton guilty beyond a reasonable doubt, and Thornton argued that the State's evidence was therefore insufficient to support the revocation of his probation. We disagreed, concluding that the State had met the "preponderance of the evidence" burden applicable to probation revocation hearings, which are civil in nature. *Id.* at 96, 99; *see* Ind. Code § 35-38-2-3(e). In both *Jackson* and *Thornton*, we noted that the

appropriateness of revocation following an acquittal must be decided in each case, based upon the evidence presented at the revocation hearing. *Jackson*, 420 N.E.2d at 1242; *Thornton*, 792 N.E.2d at 99. In many cases where a defendant has been acquitted, the State may not be able to meet its preponderance burden. *Id.*

In the instant case, Davis does not dispute that the State satisfied its burden at the probation revocation hearing.¹ Rather, she asks us to overrule our prior holdings in *Jackson* and *Thornton*, and hold instead that the trial court violated double jeopardy and/or collateral estoppel by revoking her probation for committing the crime of prostitution after she was acquitted of that same charge. We decline to do so, as Davis offers no convincing argument as to why we should.²

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.

¹ The trial court ordered Davis's probation revoked after specifically finding that there was probable cause to believe that Davis had committed the crime of prostitution. By establishing probable cause, the State satisfied its burden of proving by a preponderance of the evidence that Davis violated the law. *See Richeson v. State*, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995), (holding that where there is evidence submitted at the revocation hearing from which the trial court could find that an arrest was reasonable and that there is probable cause for belief that a defendant violated a criminal law, revocation of probation is permitted), *trans. denied*.

² In support of her argument, Davis cites an Illinois Supreme Court case, *People v. Grayson*, 319 N.E.2d 43 (Ill. 1974). The case was overruled seventeen days after Davis filed her brief by *People v. Colon*, 866 N.E.2d 207 (Ill. 2007). Even when *Grayson* was good law, it was unpersuasive because it was decided in another jurisdiction and because, as we have acknowledged before, it clearly represented the minority view on the issue Davis raises here. *See Thornton*, 792 N.E.2d at 98; *Jackson*, 420 N.E.2d at 1241.